

VOL. XXXV.

HONOLULU, HAWAII TERRITORY, TUESDAY, JULY 1, 1902

PRICE FIVE CENTS.

PAIN AGAIN  
THE LOSEREstee Holds Rapid  
Transit Is  
Right.FORMER DECISIONS  
SAID TO BE FINALInjunction Denied and the Case  
Thrown Out of  
Court.

Fain and the tramways met their second Waterloo at the hands of Judge Estee in the United States District Court yesterday. Not only was the injunction not allowed and the bill dismissed, but the Court stated that he did not believe any court would consider the attack made upon the charter of the Rapid Transit Company in the pleading in the case on trial. By the decision of Judge Estee in the case of the Hawaiian Tramways Co. vs. the Honolulu Rapid Transit and Land Co. made yesterday, the work upon the King street extension may continue uninterrupted and there will be no interference with the operation of the electric road.

This is not only Pain's second defeat in the United States Court, but he had previously been "kicked out of court," to use an expression of Pain's attorney, by both Circuit and Supreme Courts of the Territory.

The fight in United States Court yesterday, while brief, was exceedingly interesting. From the beginning of the argument Judge Estee broadly intimated that he had no faith in the claims of the Hawaiian Tramways Company, and early in the proceedings, before respondent had argued, he refused to grant the preliminary injunction against the Rapid Transit Company. Mr. McClanahan, who appeared for the respondent, however, refused to accept the decision of the court in simply de-

nying the motion and asked to be allowed to argue his side of the case. This he did, with the result that his motion to dismiss the bill was also granted, and the case was thrown out of court.

E. B. McClanahan and H. A. Bigelow appeared for the Honolulu Rapid Transit Company, and R. W. Breckons and J. J. Dunne represented Pain when the case was called up before Judge Estee yesterday morning. Following the reading of the complaint and the return made by the respondent to the order to show cause, Mr. Breckons presented his argument to the court. He first called attention to the fact that the respondent had made no denial of certain facts, which were thus admitted as proven. It was claimed in the bill of complaint that the franchise granted to the Honolulu Rapid Transit Company on July 7th, 1898, by the legislature and afterwards approved by President McKinley, was null and void for the reason that the legislature and republic were not in existence, legally, at that time. These allegations not being denied, Breckons insisted that they left them as proven, and this failure left the Rapid Transit in the position of using the streets of Honolulu without power so to do.

"The bill shows affirmatively," continued Breckons, "that the points of law involved are entirely different from those decided in the previous cases in which the legislature and the United States Court. And let me say right here that the Territorial Supreme Court, in its decision, held out a danger flag for the Rapid Transit Company in saying that it only decided questions before it, and if it had not been admitted that the respondent was the holder of a legal franchise the decision would have been the other way. It considered at that time only the portion of King street from Nuuanu stream to Thomas Square, and it was only upon this question that the Supreme Court gave an opinion."

"I don't look at it in that way," interrupted Judge Estee. "This court held that the Rapid Transit Company had a right to occupy King street; that is a pretty well known name here, and the court didn't specify as to what part of it should be occupied."

"The United States Supreme Court has held that when facts of damage peculiar to a plaintiff are raised, a case can be brought up again."

"It seems to me that I passed upon the facts in the previous case," said the Court. "I want to hear you on the question of jurisdiction. I consider that the only question involved."

Mr. Breckons then quoted from United States decisions to prove that the judgment of a court in its interpretation of statutes was not conclusive if another action is brought. The question of the validity of the franchise, he said, had never been before Judge Estee nor had been the question of the taking of public property for private use without just compensation. "There is no question as to the jurisdiction of this court," he continued, "the validity of the rights held by the plaintiff has never been presented to your honor. If the Hawaiian Tramways Company has an exclusive right to the streets of Honolulu, it was wrong to take such rights

from it, and give to another corporation unless proceedings had been brought to take away the charter. A charter right is, I contend, a private right, and the constitution provides that private rights may not be taken for public use without just compensation."

Mr. Dunne followed Mr. Breckons in a brief argument, confining himself to the scope of the injunction which was asked by the Tramways Company, and contending that an injunction was not intended to operate when the injury had already been done, but that it still could prevent the operation of the road. "The injury in this case is of twofold character," he said. "It not only involves the mere construction of the electric road, but also the operation of the line. Of the two injuries to complainant the operation of the road is the most serious."

"The mere laying of the tracks alongside the rails of the Hawaiian Tramways would of itself, without the operation of the cars, do no injury to the plaintiff, however much it might inconvenience and injure others. But it is the operation of this road which interferes with the exclusive franchise held by Mr. Pain."

"Is there anything to show that an exclusive franchise is held by the Tramways Company?" asked the Court.

"There is nothing here to deny it," answered Dunne. "It has never been denied that the Hawaiian Tramways Company has an exclusive right to the use of these streets."

## INJUNCTION DENIED.

At this point Judge Estee again interrupted and said he would refuse to issue the preliminary injunction as prayed for.

"In the other case the court held," said he, "that it would not grant a preliminary injunction. This court never has granted but one preliminary injunction, and then I was sorry after-wards for doing it. I will not grant a preliminary injunction unless compelled to do so. The court will not grant a preliminary injunction in this case, but will go right ahead to trial on its merits."

"I wish the Court would first hear me upon this order to show cause," said Mr. McClanahan. "The Court stated that it will not grant an injunction in this case," continued Judge Estee. "We have had a trial upon identical the same questions, and an appeal has been taken to the Circuit Court of Appeals. If the Court committed an error in this trial, it certainly did in the first trial, and it would be foolish to grant an injunction now."

"The action in the other case is now up for review, and besides this Court will hesitate for a long time before interfering with an order made by the Territorial courts. The Supreme Court of Hawaii, whether right or wrong, did decide that the Honolulu Rapid Transit Company had a right to the use of King street, and that decision still stands. This Court knows that the tracks now lay on King street, and as to stopping the operation of the railway, there are fifty decisions of United States courts, mostly in the cases of

(Continued on Page 12.)

## BY AUTHORITY.

COMMISSION OF AGRICULTURE  
AND FORESTRY, TERRITORY  
OF HAWAII.

Competitive exhibition of fruits, vegetables and plants, for money prizes and diplomas.

Monday and Tuesday, July 28th and 29th, 1902, in the Drill Shed, Honolulu.

Exhibits are invited in the various divisions, named in the following schedule:

## DIVISION I.

Mangoes—Twelve specimens, two prizes.  
Alligator Pears—Six specimens, two prizes.  
Pineapples—Four specimens, two prizes.  
Figs—Twelve specimens, two prizes.  
Watermelons—Four specimens, two prizes.  
Muskmelons—Four specimens, two prizes.  
Breadfruit—Four specimens, two prizes.  
Oranges—Twelve specimens, two prizes.  
Limes—Twelve specimens, two prizes.  
Lemons—Twelve specimens, two prizes.  
Papayas—Six specimens, two prizes.  
Grapes—Six bunches, two prizes.  
Guavas—Twelve specimens, two prizes.  
Peaches—Twelve specimens, two prizes.  
Strawberries—One quart, two prizes.  
Beans—One quart, two prizes.  
Mountain Apples—Twelve specimens, two prizes.  
Bananas—Best bunch Hawaiian cooking, two prizes.  
Bananas—Best hand, two prizes.  
Coconuts—Four specimens, two prizes.  
Best exhibit of fruits, two prizes.

## DIVISION II.

Potatoes—Irish; ten specimens, two prizes.  
Potatoes—Sweet; ten specimens, two prizes.  
Yams—Six specimens, two prizes.  
Cabbage—Three heads, two prizes.  
Cauliflower—Three heads, two prizes.  
Celery—Three roots, two prizes.  
Sweet Corn—Twelve ears, two prizes.  
Beans—String; two pounds, two prizes.  
Beans—Shell; two pounds, two prizes.  
Beets—Six specimens, two prizes.  
Tomatoes—Six specimens, two prizes.  
Carrots—Six specimens, two prizes.  
Lettuce—Four heads, two prizes.  
Turnips—Six specimens, two prizes.  
Radishes—Two bunches, two prizes.  
Onions—Six specimens, two prizes.  
Chilipeppers—One pound, two prizes.  
Dryland Taro—Six specimens, two prizes.  
Wetland Taro—Six specimens, two prizes.  
Pumpkins—Four specimens, two prizes.  
Squash—Four specimens, two prizes.  
Best exhibit of Vegetables—Two prizes.

## DIVISION III.

Coffee—Best exhibit, two prizes.  
Paddy—Two pounds, two prizes.  
Rice—Two pounds, two prizes.  
Sugar Cane—Ten sticks, two prizes.

## DIVISION IV.

Hay—One bundle, two prizes.  
Sorghum—One bundle, two prizes.  
Guinea Grass—One bundle, two prizes.  
Buffalo Grass—One bundle, two prizes.  
Alfalfa—One bundle, two prizes.  
Clover—One bundle, two prizes.  
Panicum Grass—One bundle, two prizes.

## DIVISION V.

Potted Palms—Best collection, two prizes.  
Hawaiian Palm—Loulou lolo, best one, two prizes.  
Best collection of ferns (12), at least six distinct varieties.

## DIVISION VI.

Cut Flowers—Best collection, two prizes.  
Roses—Best collection, two prizes.  
Carnations—Best collection, two prizes.  
Asters—Best collection, two prizes.  
Orchids—Best collection, two prizes.

## DIVISION VII.

Ilima Leis—Best three, two prizes.  
Carnation Leis—Best three, two prizes.  
Maile Leis—Best three, two prizes.  
Plumaria Leis—Best three, two prizes.

The necessary accommodation for exhibits will be provided by the Commissioner of Agriculture and Forestry, who requests that notice be sent him in writing of intention to exhibit, to P. O. Box 532, Honolulu.

The exhibit opens at 10:30 o'clock a. m. Monday, July 28. All exhibits must be in place one hour before the opening or they will not be entitled to compete for prizes. The steamship companies in order to give the people of the Islands an opportunity to view the exhibit have reduced the steamer rates by one-half and agree to carry all exhibits free of charge. For any further information address,

WRAY TAYLOR,  
Commissioner of Agriculture and Forestry.

## SHERIFF'S SALE NOTICE.

Under and by virtue of a certain execution issued out of the Circuit Court of the First Circuit of the Territory of Hawaii, on the 5th day of April, A. D. 1902, in the matter of the Honolulu Stock Yards Company, Limited, a corporation, plaintiff, vs. W. C. Achi, defendant, I have, on this 5th day of June, A. D. 1902, levied upon and shall expose for sale and sell at public auction to the highest bidder, at the Police Station, Kalaikaua Hale, in Honolulu, Island of Oahu, Territory of Hawaii,

at 12 o'clock noon of Tuesday, the 8th day of July, A. D. 1902, all the right, title and interest of said defendant, W. C. Achi, in and to the following described property, unless the judgment and costs of execution, amounting to five hundred and fifty-nine and 1-100 dollars, interest, costs and my expenses are previously paid:

1.—All that certain piece or parcel of land situated at Kewalo, Honolulu, Oahu, described in Royal Patent 5715, Land Commission Award No. 10605 to Kamakee Pihikoi, conveyed to said W. C. Achi by deed of George N. Wilcox, dated December 15th, A. D. 1899, and recorded in the Registry Office in Liber 200, Page 337, Sub-

ject to the mortgage made by said W. C. Achi to Charles M. Cooke, Ltd., dated December 18, A. D. 1899, and recorded in said Registry Office in Liber 204, Page 63.  
2.—All that certain piece or parcel of land situated at Mokuauia, Kailahi, Kona, Oahu, known as "Kailani Tract," containing an area of 154 1/2 acres, and being a part of the premises described as Apana 2 of Land Commission Award 6450, Royal Patent 2509 to Kaunuuohua for Moehonua, and that being the same premises conveyed to said W. C. Achi by Kapiohoni Estate, Limited, by deed dated October 3rd, A. D. 1899, and recorded in said Registry Office in Liber 200, Page 115. Subject to the mortgage made by said W. C. Achi to W. R. Castle, dated October 4th, A. D. 1899, and recorded in said Registry Office in Liber 196, Page 373, and by said W. R. Castle to Bank of Hawaii, Ltd., by assignment of mortgage, dated October 6th, A. D. 1899, and recorded in said Registry Office in Liber 196, Page 374.

3.—All those certain pieces of land situated at Mokuauia, Kailahi, Kona, Oahu, conveyed to said W. C. Achi by deed of Kapiohoni Estate, Limited, dated February 5th, A. D. 1901, and recorded in said Registry Office in Liber 222, Page 249, now known as "Kapiohoni Tract," and more particularly described as follows:

1st.—Containing 158.2 acres, being a part of Apana 1 of Land Commission Award No. 6450 to Kaunuuohua for Moehonua.

2nd.—Loko of Pabounui and Kula, 26 acres of fish pond (Loko) and 10.7 acres of dry land (Kula), being part of Apana 1 of Land Commission Award No. 6450 to Kaunuuohua for Moehonua.

3rd.—The Loko of Pohoukai, containing 18.5 acres, part of Apana 1 of Land Commission Award 6450 to Kaunuuohua for Moehonua.

4th.—Portion of grant 3420, containing 4.7 acres.

5th.—A portion of the Kula of Ananoho, containing 5.3 acres.

6th.—All that portion of the land conveyed by deed of Mary Auld and W. Auld to Kapiohoni in Liber 172, Page 341, and containing 1.36 acres and 0.65 acres.

Subject to mortgage made by said W. C. Achi and wife, Mary Achi, to Kapiohoni Estate, Limited, dated February 5th, A. D. 1901, for \$300,000, and recorded in said Registry Office in Liber 221, Page 29.

CHAS. F. CHILLINGWORTH,  
Deputy Sheriff, Ter. of Hawaii,  
Honolulu, Oahu.

6189—June 7, 16, 24, July 1, 8.

## WATER NOTICES.

In accordance with Section 1 of Chapter XXVI of the laws of 1890: All persons holding water privileges or those paying water rates are hereby notified that the water rates for the term ending Dec. 31, 1902, will be due and payable at the office of the Honolulu Water Works on the 1st day of July, 1902.

All such rates remaining unpaid for fifteen days after they are due will be subject to an additional 10 per cent.

All privileges upon which rates remain unpaid August 15, 1902 (thirty days after becoming delinquent), are liable to suspension without further notice. Rates are payable at the office of the Water Works, in the basement of the capitol building.

ANDREW BROWN,  
6200 Supt. Honolulu Water Works.

CAPT. A. A. FOX  
DIES OF CHOLERA

Former Honolulu Policeman a  
Victim to the Scourge  
at Manila.

Captain A. A. Fox, formerly of the Honolulu mounted police force, is dead of cholera at Manila. A few weeks ago this paper printed a letter from him, accompanied by a rough map, showing the proximity of the Manila cholera district to his place of business. (The account of Captain Fox's death, which follows, is taken from the Manila American.)

Mr. A. A. Fox, agent for Castle Bros. & Wolf at Santa Cruz, Laguna de Bay, died of cholera Monday evening.

He was born at Salinas, California, and was about 45 years of age. Mr. Fox has a wife who has been living at Honolulu and is expected here on the next boat. The unfortunate victim of the plague was until a short time ago captain of mounted police in Honolulu, where he made an enviable record as an officer and a gentleman.

He has many friends in Manila and the news of his death must come as a painful shock to all who knew him.

SEND FOR FREE  
ILLUSTRATED  
CATALOGUE OF  
LADIES', CHILDREN'S  
AND INFANTS'  
WEAR

GOODS OF QUALITY  
EXCLUSIVE RIGHTS  
REASONABLE PRICES  
I. MACHIN & CO.  
918-922 MARKET ST.  
SAN FRANCISCO, CAL.

## PROFESSIONAL CARDS.

## ARCHITECTS

BEARDSLEE & PAGE, Architects and Builders.—Office, 3d floor, Elite building, Hotel street; sketches and correct estimates furnished at short notice; Tel. 229; P. O. box 773.

## ATTORNEYS

THOMAS FITCH.—Office 601 Stangenwald building, Honolulu, T. H. Will practice in all the courts.

THAYER & HEMENWAY.—Office 603 and 604 Stangenwald building; Telephone 388 Main.

## BROKERS.

E. J. WALKER, Coffee Broker. Highest prices paid for No. 1 Parement Coffee. Send samples.

## CHIROPODIST.

D. M. THOMSON.—Expert Chiropodist. No. 13 Garden Lane, between Union and Beretania streets.

DR. W. R. BOGLE.—Office, Oregon block, Hotel and Union Sts.

## CONTRACTORS

WM. T. PATY.—Contractor and Builder, store and office fitting; shop Alakea St., between King and Hotel; res., 1641 Anapuni.

## DENTISTS.

DR. H. BICKNELL.—McIntyre bldg., rooms 2 and 14; office hours, 9 to 4.

ALBERT B. CLARK, D.D.S.—Beretania and Miller; office hours, 9 to 4.

I. E. GROSSMAN, D.D.S.—Alakea St., three doors above Masonic Temple, Honolulu; office hours, 9 a. m. to 4 p. m.

DR. A. C. WALL, DR. O. E. WALL.—Office hours, 9 a. m. to 4 p. m.; Love bldg., Fort St.; Tel. 434.

## ELECTRICAL ENGINEERS.

JAS. S. MCKEE.—Electrical, Mechanical and Consulting Engineer; office, rooms 11 and 12, Progress block.

## ENGINEERS.

ARTHUR C. ALEXANDER.—Surveyor and Engineer, 409 Judd bldg.; P. O. box 732.

JATTON, NEILL & CO., LTD.—Engineers, Electricians and Boiler-makers, Honolulu.

E. TAPPAN TANNATT.—Civil and Electrical Engineer. Office, Room 4, Spreckels block. Residence, 1335 Wilber Ave. Telephone, Main 123.

JAMES T. TAYLOR, M. Am. Soc. E. E.—Consulting Hydraulic Engineer; 206 Judd bldg., Honolulu; P. O. box 799.

## ENGRAVERS.

W. BEAKBANE.—Card Engraving and Stamping; room 3, Elite building.

## INSURANCE.

THE MUTUAL LIFE INSURANCE CO. OF NEW YORK.  
S. B. ROSE, Agent, Honolulu.

## MUSICIANS.

COOK'S MUSIC SCHOOL.—Lava bldg., will hold summer term during July and August.

## PHYSICIANS.

DR. W. HOFFMANN.—Beretania St., opposite Hawaiian Hotel. Hours, 9 to 11 a. m.; 1 to 3, and 7 to 8 p. m. Phone White 481.

DR. T. MITAMURA.—Office, 1468 Nuuanu St.; residence next door. Tel. White 132; office hours, 9 to 10 a. m., and 6 to 8 p. m., except Sundays.

DR. J. UCHIDA.—Physician and Surgeon; office, Beretania, between Fort and Nuuanu streets; office hours, 9 to 12 a. m., 7 to 8 p. m.; Tel. 1311 White.

## NOTICE.

PERSONS needing or knowing of those who do need protection from physical or moral injury, which they are not able to obtain for themselves, may consult the Legal Protection Committee of the Anti-Slavery League, 9 McIntyre building. W. H. RICE, Supt. 6165.



The famous "Lion Brand" of shirts manufactured by the U. S. Shirt and Collar Co., are now being offered by

The von Hamm-Young Co., Ltd.  
Queen Street

at prices that will surprise and please you.

Hawaii Shingo Sha

THE PIONEER JAPANESE PRINTING office. The publisher of Hawaii Shingo, the only daily Japanese paper published in the Territory of Hawaii.  
C. SHIOZAWA, Proprietor.  
Y. SOGA, Editor.

Editorial and Printing Office—1038 Smith St., above King. P. O. Box 907. Telephone Main 97.

Washington Mercantile Co.'s  
FIRE SALE

Groceries, Canned Goods, etc., Damaged by Water

SOLD AT

75 PER CENT  
BELOW COST

SALE TAKES PLACE AT

Union Feed Co. Warehouse

Queen Street, Between Fort and Alakea

This Sale Will Only Last a Few Days!

COME EARLY AND AVOID THE RUSH